HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.7391 of 2007

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Between:

Dr.T.K. Srinivasulu

…Petitioner

And

The State Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Health, Medical & Family Welfare Department,
Hyderabad & others

….Respondents.

:: O R D E R ::

Counsel for the petitioner : Shri T.K. Srinivasulu,
Petitioner, party-in-person

27.04.2007

Per G.S. SINGHVI, CJ

Having failed to persuade the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') to quash the integrated seniority list of Professors and Senior Medical Officers employed in the department of Indian Medicines and Homeopathy, Government of Andhra Pradesh, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

The Facts:

(1) The petitioner joined service as Lecturer/Medical Officer (Homeo) on 30.03.1979. He was promoted as Senior Medical Officer/Assistant Professor, Homeopathy on 13.11.1991 and presently he is holding that post.

(2) Respondent Nos. 3 to 6 joined service in Dr. Allu Ramalingaiah Homeo Medical College, Rajahmundry which was a private college till its takeover by the government in 1993.

(3) Dr. C.R. Vallabender Reddy, who was serving as Professor in Dr. Allu Ramalingaiah

Medical College, which, as mentioned above, was taken over by the government, filed O.A.No.3275 of 2001 for issue of a direction to the official respondents not to make promotions to the post of Principal till the finalization of the terms and conditions of the staff of the erstwhile private college. By an interim order dated 23.05.2001, the Tribunal directed that promotions shall not be made to the posts of Principals.

(4) Dr. T.Rambabu and 29 others, who were also employed in Dr. Allu Ramalingaiah Medical College, filed O.A.No.8760 of 2001 for fixation of their seniority along with other government employees. The same was disposed of by the Tribunal on 05.12.2001 and the following direction was issued:

> " The respondents are directed to fix the seniority of the applicants in their respective cadres along with other Govt. employees of that cadre working in the respective local cadres as on the date of absorption, strictly as per terms and conditions of absorption of these applicants and according to special rules covering service conditions of the employees of Government Homoeo Department. If such seniority lists of even Government employees of all the categories represented by the applicants are not finalized the official respondents are directed to finalise them duly incorporating the names of the applicants at the appropriate places. The applicants have to be informed their position in the inter seniority and other Government employees of their respective cadre before finally publishing the inter seniority of the applicants and other Government servants of their respective cadre."

(5) In compliance of the abovementioned direction, the Commissioner and Director, Department of Indian Medicines and Homeopathy, Government of Andhra Pradesh (respondent No.2 herein) issued provisional inter se seniority list on 07.10.2002 incorporating therein the names of persons who were already on government service and those who were absorbed from the taken over medical college. In that list, respondent Nos. 3 to 6 were shown in the category of Professors. They were assigned seniority with effect from 27.03.1993 i.e. the date of take over of the college. The petitioner was shown in the category of Senior Medical Officers.

(6) The petitioner submitted representation dated 26.02.2003 and claimed seniority over respondent Nos. 3 and 4 by contending that they were junior to him in the cadre of Medical Officers. His representation was rejected on the ground that the same had been received after the last date specified in the provisional seniority list for submission of objections. After six months, final seniority list of Assistant Professors/Senior Medical Officers was circulated vide letter dated 24.11.2003.

(7) The petitioner challenged the integrated seniority list in O.A.No.804 of 2005 and prayed as under:

> " (a) set aside the L.Dis. Memio No.5002/H1/2003 dated 23.05.2003 and modify the Memo No.9581/H1/2002 dated 24.11.2003 of the 2nd respondent and to declare that the applicant is senior to the

3rd to 6th respondents and consequently to direct the 1st and 2nd respondents to promote the applicant as Asst. Professor/Senior Medical Officer with effect from 1.1.1984 and as Professor/Chief Medical Officer with effect from 30.08.1989 i.e. from the dates of promotion of the 3rd and 4th respondents i.e. his juniors with al the consequential and other benefits including pay fixation and arrears of pay.

(b) to direct the 1st and 2nd respondents that the 3rd to 6th respondents' services up to 1984 i.e. up to the period of ending of their termination cannot be counted for seniority, service and pensionary benefits, vide State of Bihar v. S.A. Hassan : AIR 2002 SC 1258 which declared "Benefit of counting of period of service rendered by employees in private medical college before it was taken over cannot be granted. Further declared that a Government servant does not qualify for pension unless he confirms to three conditions viz. **(1) His service must be under Government (2) the employment must be substantive and permanent and (3) service must be paid by the Government** and/or pass such other order/orders this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

(8) The learned Judicial Member of the Tribunal took cognizance of the fact that respondent Nos. 3 to 6 were holding the posts of Professors on the date of take over of Allu Ramalingaiah Medical College by the State Government and in terms of G.O.Ms.No.336 dated 06.08.2002, they were assigned seniority only from the date of take over i.e. 23.08.1993 and held that the petitioner cannot claim seniority over the private respondents.

Shri T.K. Srinivasulu, who appeared in person, emphasized that respondent Nos. 3 and 4 were appointed as Medical Officers in the private college after his appointment on that post in the government and argued that they cannot be assigned seniority over him merely because they were promoted as Professors with effect from 01.09.1989. Shri Srinivasulu further argued that while fixing inter se seniority of the existing government employees and those who were earlier appointed in the private college, respondent No.2 should have taken into consideration their total length of service and if that had been done, respondent Nos. 3 to 6 could not have been ranked senior to him.

We have given serious thought to the arguments of the petitioner, but have not felt persuaded to agree with him. It is neither the pleaded case of the petitioner nor he argued that the seniority of respondent Nos. 3 to 6 has been fixed by taking into consideration the services rendered by them before takeover of Allu Ramalingaiah Medical College by the State Government. Rather, the undisputed factual matrix of the case shows that respondent Nos. 3 to 6 have been assigned seniority only with effect from 23.08.1993 i.e. the date on which Dr. Allu Ramalingaiah Homeopathy Medical College was taken over by the State Government. Therefore, the petitioner's grievance in the matter of fixation of seniority of respondent Nos. 3 to 6 cannot but be termed as wholly misconceived.

The petitioner's plea that he should be ranked senior to respondent Nos. 3 to 6 because he was initially appointed as Medical Officer on 30.03.1979 whereas respondent Nos. 3 and 4 were appointed on that post on 01.05.1979 and 12.07.1979 and other

respondents were appointed thereafter sounds attractive but lacks merit and is liable to be rejected because all the respondents had been promoted as Professors before 13.11.1991 ie. the date on which the petitioner was promoted as Assistant Professor. In our considered view, the petitioner cannot have any competition with the private respondents in the matter of fixation of seniority because they are holding posts in different cadres.

No other point has been argued.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.Nos. 9447 and 9448 of 2007 filed by the petitioner for interim relief are also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

27.04.2007
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